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09/876,759	06/09/2001	Nicholas P. Patella		1880

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EXAMINER

GOODWIN, JEANNE M

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/876,759

Applicant(s)

PATELLA, NICHOLAS P.

Examiner

Jeanne-Marguerite Goodwin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/10/01 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the timer as claimed in claims 1 and 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The following changes have been made to the disclosure: Specification, page 1, lines 4 and 7: --(now abandoned)-- has been added to update the status of CIP application.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a signal circuit as claimed in claims 1 and 11.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject

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matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention: "the timer means" including the means for automatically initiating a selected number of additional shorter time intervals gives functional language to a "timer" that is outside this known definition. Perhaps the means for automatically initiating a selected number of additional shorter time intervals should be included as part of the signal circuit, e.g., CPU, since it would be the CPU that would be controlling and initiating the time intervals, respectively.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5-8; claim 11, lines 5-8: the claim language is confusing because "the timer means including the means for automatically initiating a selected number of additional shorter time intervals" gives functional language to a "timer" that is outside this known definition. Perhaps the means for automatically initiating a selected number of additional shorter time intervals should be included as part of the signal circuit, e.g., CPU, since it would be the CPU that would be controlling and initiating the time intervals, respectively.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

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basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

8. Claims 1-5, 7-12 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,449,218 to Lluch [hereinafter Lluch].

Lluch discloses a reminder device comprising a housing, a microprocessor (106) having a timer means, button switches (112), a display (104) for displaying time intervals as well as real time, and alarms such as lights (116) and speaker (118). The operation of the device is as follows: when the device reaches a scheduled/normal time for an alarm; the alarm will automatically beep for .5 second every two seconds over a 30-second period. After the first 30 seconds, every several minutes (typically five minutes), the alarm will beep for .5 second, typically every two seconds over a ten second period until a Done/Medicine Taken button of Clear Alarm button is pressed, then a new scheduled/normal time is displayed. Furthermore, the display means can graphically show serious of word(s) associated with the alarm time.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lluch.

Lluch discloses a device as stated above with regards to claims 1-5, 7-12 and 16.

Lluch discloses all the subject matter claimed by applicant with the exception of the limitation stated in claim 6, i.e., the produced signal is vibratory.

Official Notice is taken with respect to claim 6 since it is very well known in the timepiece art to use a vibratory signal has an alternative type of signaling means which will provide the same function, if one is replaced with the other, of alerting a user.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lluch in view of US Patent 6,301,196 to Daniel [hereinafter Daniel].

Lluch discloses a device as stated above with regards to claims 1-5, 7-12 and 16.

Lluch discloses all the subject matter claimed by applicant with the exception of the limitation stated in claim 13, i.e., a microphone.

With respect to the limitation stated in claim 13: Daniel discloses a reminder device comprising a microphone and speaker assembly in order to be able to record various instructions to be played at various time intervals. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the speaker, as taught by Lluch, with the microphone and speaker assembly, as taught by Daniel, since both are alternative types of audible means which will provide the same function, if one is replaced with the other, of producing an audible signal.

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12. Claims 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Lluch and Daniel.

The combination of Lluch and Daniel disclose a device as stated above with regards to claim 13. The combination of Lluch and Daniel disclose all the subject matter claimed by applicant with the exception of the limitation stated in claim 14, i.e., the housing is an elliptical shell; and the limitation stated in claim 15, i.e., the produced signal is vibratory.

With respect to the limitation stated in claim 14, the shape of the housing, i.e., elliptical shell, absent any criticality, is only considered to be an obvious modification of the shape of the housing disclosed by the combination of Lluch and Daniel as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

Official Notice is taken with respect to claim 15 since it is very well known in the timepiece art to use a vibratory signal has an alternative type of signaling means which will provide the same function, if one is replaced with the other, of alerting a user.

13. Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lluch in view of US Patent 5,365,496 to Tolan-Samilow [hereinafter Tolan-Samilow].

Lluch discloses a device as stated above with regards to claims 1-5, 7-12 and 16.

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Lluch discloses all the subject matter claimed by applicant with the exception of the limitation stated in claims 18-20, i.e., a reward means; and the limitation stated in claims 21 and 22, i.e., the particular type of reward.

With respect to the limitations stated in claims 18-20: Tolan-Samilow discloses a device comprising a reward circuit (8) in order to provide a stimulus, e.g., "a job well done", following a correct or desired response. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add the reward circuit, as taught by Tolan-Samilow, to the device, as taught by Lluch, in order to provide a stimulus following a correct or desired response, as already suggested by Tolan-Samilow.

With respect to the limitation stated in claims 21 and 22: The particular type of reward chosen is a mere selection of alternatives lacking any criticality.

### *Conclusion*

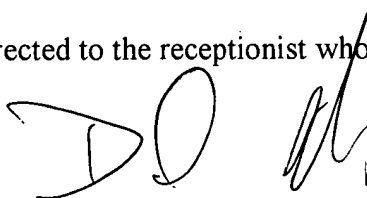
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 disclose related devices. US Patent 5,583,832 to DePonty; US Patent 5,657,753 to Jacober et al.; US Patent 5,691,932 to Reiner et al.; US Patent 5,929,747 to Rosenblatt et al.; and US Patent 6,104,674 to Emoff et al. disclose devices comprising interval timers

15. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate



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Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

A handwritten signature in black ink, appearing to read 'DM', is positioned above the printed name of David Martin.

JMG  
March 24, 2003

DAVID MARTIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800